

Application Serial No.: 10/671,459
Art Unit: 1761

Attorney Docket No. 8902.01
Confirmation No. 6656

REMARKS

By the present amendment, Applicant has cancelled Claims 1-16, and added Claims 17-36. Claims 17-36 remain pending in the present application. Claims 17 and 36 are independent claims, and have been essentially rewritten from original claims incorporating the specific limitations of the embodiments set forth in Applicant's specification.

In the Office Action dated July 16, 2004, the Examiner rejected Claims 1-16 under 35 U.S.C. 103(a) as being unpatentable over a Tamasaki (JP 10-215759) in view of Mederer (EP 349,841), and Neuhauser (FR 2,744,593), or in the alternative of Mederer and Neuhauser in view of Tamasaki, both further in view of a myriad of alleged combinations Manoski (6,159,511), Heppe (873,369), Mueller (1,494,861), Renner (2,924,529), Eales (5,066,502), Josephsohn (Des. 69,277), Harris et al. (Des. 274,859), Bernat (EP 447733), Gardner (3,366,077), Oprean (1,913,851), Devillars (GB 302303), Sisco (Des. 54,782)*, and Swiss Colony Christmas Book (Pub. 1982). These grounds of rejections are respectfully traversed. It is noted that the Sisco reference is not cited on the PTO-892.

Applicant has rewritten the claims of the instant application in order to more specifically define the embodiments of the disclosed invention. Applicant respectfully submits that for at least this reason, Claims 17-36 are allowable over the prior art applied of record.

In particular, new independent Claim 17 recites a candy novelty including a carrier substrate; a first layer of substantially hard candy disposed on a portion of the carrier substrate. The first layer of substantially hard candy is characterized as having a solid three-dimensional shape of a human skull. A second layer of generally soft candy is disposed over the first layer, with the second layer being of generally soft candy forming generally an exterior representation of an anatomically

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correct face. The second layer is further characterized as being shaped and colored so as to represent a recognizable persona.

New independent Claim 36 recites a candy novelty including a carrier substrate; a first layer of substantially hard candy disposed on a portion of the carrier substrate, the first layer of substantially hard candy having a solid three-dimensional shape of a skeleton of a thumb; and a second layer of generally soft candy disposed over the first layer, the second layer of generally soft candy forming generally an exterior representation of an anatomically correct thumb; wherein the second layer of generally soft candy is shaped and colored so as to represent a recognizable thumb.

The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the following reasons is respectfully requested.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

The primary applied reference to Tamasaki discloses a cake formed in and flavor to represent a portion of fried chicken when eaten. The Tamasaki reference fails to provide a carrier substrate, such a stick, as recited in each of Applicant's independent Claims 9, 14, and 19. Further, the Tamasaki provides a hard biscuit as an imitation bone, and a flavored cake material as the flesh in order to simulate fried chicken, wherein the imitation bone is an edible carrier. As such, the Tamasaki foodstuff may reduce the amount of residual waste; Tamasaki increases the risk of the ingestion of a bacterial or viral matter due to the handling of the edible carrier.

The secondary references likewise fail to provide the necessary teaching to overcome the deficit of the Tamasaki reference. For instance, each of the references to Mederer and Neuhauser

discloses multi-layer foodstuff that has at least three layered segments, such that the top and bottom layers are the same, and the inner layer has a different shape and color, so as to represent a 'traditional hamburger', or some other sandwich type food. Neither Mederer nor Neuhauser describe a candy novelty having a carrier substrate, such as a stick. There is no guidance or motivation found in either of these references that would have lead one of ordinary skill to obviously arrive at Applicant's uniquely claimed structure as now recited in independent Claims 17 and 36.

With respect to the remaining myriad of alleged combinations, it is Applicant's opinion that there is not a single cited or applied reference that encompasses the basic structure, alone or in combination, of Applicant's candy confection novelty as claimed. Specifically, the remaining relied upon references to Manoski, Heppe, Mueller, Renner, Eales, Bernat, Gardner, Oprean, DeVillars, Sisco, Burt ('324), Burt ('997), Musher, and the Swiss Colony pub., like Mederer and Neuhauser, fail lead one having ordinary skill to obviously arrive at Applicant's claimed invention, as recited in the independent claims. Albeit, the Bernat reference does disclose a non-edible wand (i.e., stick) however, the Bernat clearly specifies that the wand is disposed in the lower semi-spherical outer layer of the lollipop. In addition, the outer layer of Bernat is formed of a substantially hard and transparent candy. The purpose of this formulation is that Bernat desires the nucleus to be visible before consumption of the outer layer of the lollipop. Whereas, Applicant's claimed candy provides a delightful and surprise effect for the consumer upon seeing the hidden internal hard candy having the anatomical form.

With respect to the Josephohn and Harris et al. design patents, although the physical appearances of these applied references seem to disclose the form of a body or body part, there is no guidance or motivation that provides one having ordinary skill in the art, aside from Applicant's

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own disclosure to arrive at the structure and arrangement of the claimed embodiments of Applicant's invention.

Further, the application of such a great barrage of references would lead one skilled in the art to chaos and confusion rather than to the structure of the claimed embodiments. MPEP Section 707.07(g) states:

“Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references. (See MPEP § 904.03 .) Major technical rejections on grounds such as lack of proper disclosure, lack of enablement, serious indefiniteness and res judicata should be applied where appropriate even though there may be a seemingly sufficient rejection on the basis of prior art. Where a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression.”

The courts have held the piecemeal rejections are improper and should be avoided, see *In re Phillips, Eiben and Morgan*, 608 F.2d 879 (CCPA 1979).

“The PTO has apparently not considered appellants' application for compliance with 35 USC 102 and 103. Piecemeal examination is to be avoided. 37 CFR 1.104 and 1.105. See also MPEP 707.07(g).”

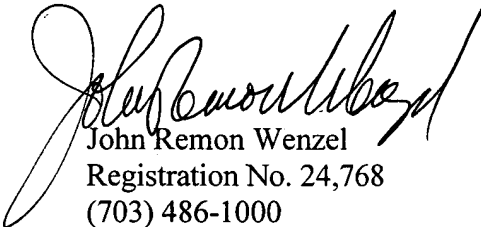
As such, Applicant respectfully requests the withdrawal of these unusual grounds of rejections that seemingly appear at a “grasping of straws” without teaching the specific limitations required of the claims.

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For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,


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